

Supreme Court, U.S.

FILED

FEB 1 1978

IN THE SUPREME COURT OF THE UNITED STATES, CLERK

MICHAEL

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration
Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari
to the Ohio Supreme Court

Brief for Respondent in Opposition

Counsel for Respondent
R. JEFFREY SCHMIDT
Crabbe, Brown, Jones,
Potts & Schmidt
One Nationwide Plaza
Suite 2500
Columbus, Ohio 43215
(614) 228-5511

INDEX

Page

| | |
|---|----|
| Opinions Below ----- | 1 |
| Jurisdiction ----- | 2 |
| Questions Presented ----- | 2 |
| Constitutional Provisions Provided ----- | 3 |
| Statement of the Case ----- | 3 |
| Argument ----- | 4 |
| Conclusion ----- | 12 |
| Appendix: | |
| Article 4, Section 1, Constitution of the United States ----- | 13 |
| Certificate of Service ----- | 14 |

CITATIONS

Page

Cases:

| | |
|--|-----|
| <u>Acme Lumber Co. v.</u> <u>Hollowell,</u> 2 O.L. Abs. 555 ----- | 9 |
| <u>Barber v. Barber,</u> 323 U.S. 77, 89 L.Ed 82, 65 S.Ct. 137 (1944)----- | 7 |
| <u>Esenwein v. Commonwealth,</u> 325 U.S. 279, 89 L.Ed 1608, 65 S.Ct. 1118 (1945)----- | 8,9 |
| <u>International Shoe Co. v.</u> <u>Washington,</u> 326 U.S. 310 66 S.Ct. 154 90 L.Ed. 95 (1945)----- | 4 |
| <u>McGee v. International Life</u> <u>Insurance Company,</u> 355 U.S. 220 78 S.Ct. 199 2 L.Ed. 2d 223 (1957) ----- | 4 |
| <u>Shaffer v. Heitner,</u> 53 L.Ed. 2d 682 95 S.Ct. 2569 (1977) ----- | 4 |
| <u>Symons v. Eichelberger,</u> 110 O.S. 224 (1924) ----- | 7,8 |

Page

Wedmore v. Karrick,
205 U.S. 141
51 L.Ed. 745
27 S.Ct. 434 (1907) ----- 5

Miscellaneous:

Article IV, Section 1,
Constitution of the United
States of America ----- 3

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration
Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari
to the Ohio Supreme Court

Brief for Respondent in Opposition

OPINIONS BELOW

The opinions delivered in the courts
below are not as yet officially reported,
but are appended to the Petition for a
Writ of Certiorari. The judgment of the

Ohio Supreme Court denying Petitioner's Motion to Certify the record was entered on September 29, 1977.

JURISDICTION

Respondent does not question the jurisdiction as set forth in the petition.

QUESTIONS PRESENTED

The Petitioner in his Petition presents two (2) questions neither of which bear upon this case or have there basis in the record of this case. While Respondent feels that the opinions of the courts below are clear and correct and no real question is presented in this case, if there is a question presented it would be with regard to the Full Faith and Credit provision of the United States Constitution and whether a judgment of a sister

state is entitled to Full Faith and Credit when sought to be enforced in the courts of another state.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article IV, Section 1.

"Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct, with the exception that it was agreed between Petitioner and Respondent that the case would be submitted to the Trial Court, on the pleadings and trial briefs. Attached to the pleadings and thereby considered as evidence were certified

copies of the Judgment Decree rendered in the State of Indiana, as well as other official documentation.

ARGUMENT

While Respondent does not take issue with the legal theories expounded in Petitioner's Argument portion of his petition (i.e., those theories expounded in International Shoe Co. v. Washington, 326 U. S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 2d 223 (1957); and Shaffer v. Heitner, 53 L.Ed. 2d 682, 95 S.Ct. 2569 (1977), etc.), Respondent states that Petitioner has missed the real issue which has been involved with this case from the very beginning. That issue, very simply, is the fact that Petitioner, from the out-

set of this case, has failed to affirmatively question the jurisdiction of the Indiana court to render the original judgment.

While it is without question that a judgment of one state is entitled to Full Faith and Credit in the courts of another state (United States Constitution, Article IV, Section 1), it is further without question that this requirement as to Full Faith and Credit does not require a state to enforce a judgment of another state if the judgment is rendered without jurisdiction, or otherwise wanting in due process of law. (Wedmore v. Karrick, 205 U.S. 141, 51 L.Ed 745, 27 S.Ct. 434 (1907))

Although the application of the Full Faith and Credit clause of the United States Constitution requires that a judgment of one state be upon proper juris-

dictional and other due process grounds, the question becomes whether it is necessary for the judgment creditor in the original suit who seeks to enforce his judgment in a sister state has the burden once again of pleading and proving proper jurisdiction. Petitioner indicates in his brief that it is incumbent upon the judgment creditor (i.e., the Respondent herein) to plead and prove jurisdiction at each point in the proceeding. Respondent respectfully submits that Petitioner is in error and that once a judgment is received in one state, and that judgment is sought to be enforced in another state, the burden of showing that there was no jurisdiction in the original action rests with the judgment debtor (i.e., the Petitioner in this case). The law is clear not only as enunciated by the Supreme Court of Ohio, but also by

the United States Supreme Court in several cases that the judgment of a court of record of general jurisdiction is presumed to be within its jurisdiction, that is, it will be presumed that a court of general jurisdiction regularly acquired and lawfully exercised its jurisdiction over the parties, not only in attempts collaterally to impeach such judgments generally, but also in an action upon it. See Symons v. Eichelberger, 110 U.S. 224 (1924), Barber v. Barber, 323 U.S. 77, 89 L. Ed. 82, 65 S.Ct. 137 (1944).

The court in Barber v. Barber, (supra), stated that:

"The judgment of a court of general jurisdiction of a sister state duly authenticated his *prima facie* evidence of the jurisdiction of the court to render it and of the right which it purports to adjudicate."

The Symons (supra) also stands for

the proposition that the burden of proof establishing the court in question not to have had jurisdiction to render the judgment sued upon rests upon the defendant.

The Supreme Court of Ohio in the Symons case held:

"3. In an action upon judgment rendered in a court of record of the District of Columbia, jurisdiction is presumed. The burden of proof of establishing that the court in question had no jurisdiction to render the judgment sued upon rests upon the defendant."

This proposition regarding the burden of proof was also enunciated in the case of Williams v. North Carolina, 325 U.S. 226, 89 L.Ed 1577, 65 S.Ct. 1095 (1945), rehearing denied 325 U.S. 895, 89 L.Ed 2006, 65 S.Ct. 1650 (1945), and Esenwein v. Commonwealth, 325 U.S. 279, 89 L.Ed 1608, 65 S.Ct. 1118 (1945). The

Supreme Court of the United States in the case of Williams v. North Carolina (supra), stated as follows:

"The burden of undermining the verity which the divorce decree of the sister state imports rests heavily upon the assailant."

Further, in the Esenwein case (supra), the court stated as follows:

"The burden is on the litigant who would escape the operation of a judgment decreed in another state to show that jurisdiction to render it was lacking."

In the case of Acme Lumber Co. v. Hollowell, 2 O.L. Abs. 555, it was held that an action upon a judgment of a court of general jurisdiction of another state, the defense being a general denial, the plaintiff is not required to prove affirmatively the loss of such foreign state showing the existence, jurisdiction and authority to render judgment, in

addition to introduction of the record
duly authenticated.

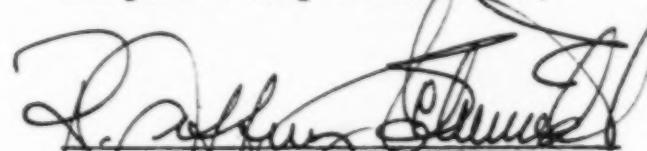
It is clear, therefore, that under the rulings laid down by the Supreme Court of the United States and the Supreme Court of Ohio, that in a suit upon a judgment rendered by a court of general jurisdiction of a sister state, jurisdiction over the subject matter and the parties is presumed that the burden of proof is upon the person attacking said judgment to show affirmatively that the court of said sister state did not have such jurisdiction. The record is clear in this case that the Petitioner offered no evidence or other testimony to rebut the presumption of jurisdiction and, as such, the presumption stands and the judgment is entitled to Full Faith and Credit in the State of Ohio.

Petitioner makes numerous allegations in its petition with regard to the lack of jurisdiction of the Indiana court to render the original judgment by indicating that the Petitioner was neither served with process nor offered any opportunity to appear and defend prior to judgment. Once again, the record is clear that Petitioner's assertions are mere allegations as there are no facts presented by the Petitioner which go to prove his allegations. Absent any proof to the contrary, the judgment of the Court of Indiana is presumed to be valid and unless affirmatively attacked in a suit upon said judgment in another state, is entitled to Full Faith and Credit by said state.

CONCLUSION

For the reasons stated above,
Respondent says that a Petition for a
Writ of Certiorari should be denied.

Respectfully submitted,



Counsel for Respondent
R. JEFFREY SCHMIDT
Crabbe, Brown, Jones,
Potts & Schmidt
One Nationwide Plaza-Suite 2500
Columbus, Ohio 43215
(614) 228-5511

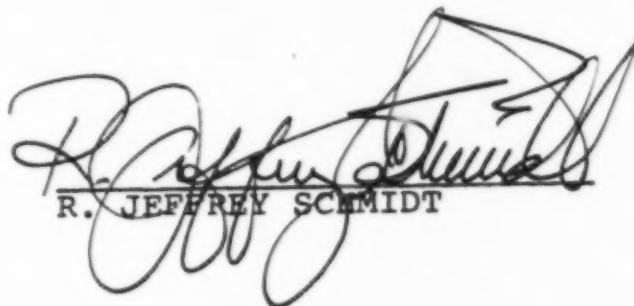
CONSTITUTION OF THE UNITED STATES

ARTICLE 4, Section 1 - FULL FAITH AND
CREDIT

Full Faith and Credit shall be given in each state to the public acts, records and judicial proceedings of every other state. The Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

CERTIFICATE OF SERVICE

I hereby certify that a copy of
the foregoing Brief for Respondent in
Opposition was served on E. Bruce Hadden,
Attorney for Petitioner, 500 West Wilson
Bridge Road, Worthington, Ohio 43085,
this 28th day of January, 1978, via
regular United States mail, postage
prepaid.



R. JEFFREY SCHMIDT